REMARKS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the claim rejections of the Office Action dated April 5, 2006 is respectfully requested by the Applicants.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 3, 36, 38, 71, and 73 were rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Ueno et al. (U.S. Patent 5,859,826) in view of Best (U.S. Patent 2,265,097). Claims 2, 37 and 72 were rejected pursuant to 35 U.S.C. 103(a) as being unpatentable over Ueno et al. in view of Best and in further view of Frederick (U.S. Patent No. 5,768,126).

Claim 1 recites, *inter alia*, each scale factor is based on an analysis of the entirety of each of said at least two digital audio files relative to each other.

Ueno et al. and Best fail, individually or in combination, to disclose each and every element of recited claim 1. As expressed by the Examiner, "Ueno does not explicitly disclose that the analysis is of the entirety of each said digital audio file" (Office Action dated April 5, 2006; Page 3).

Best also fails to disclose automatically determining a scale factor based on the entirety of the said digital audio files. Best discloses an analog mixer and a control box 54 that manually alters various sound levels before entering the mixer 30 (Column 3, Lines 21 - 23). According to Best, the various sound levels are equalized "by providing a series resistance 47 and a shunt resistance 48" controlled "by a shaft 50, operated by a bell crank 51, connected through a rod 52 with a control box 54" (Column 3, Lines 20 – 33). The various sounds levels are equalized by manually altering a lever 55, which alters the attenuation pad by two db with each notch in the control box (Column 3, Lines 40). Best automatically vary the amplitude levels based on an average level of sound. Two dB preset increments are used with manual setting. Best vary relative amplitude automatically. The scale factor is set manually. Best do not automatically determine a scale factor. Even assuming a manually set weighting or a scale factor, manual setting is not automatic determination of the scale factor. Thus, both Ueno et al. and Best fail to disclose a scale

factor based on the entirety of the said digital audio files. Accordingly, claim 1 is allowable over the cited prior art for at least this reason.

Best also use a predetermined average level of each sound sequence to vary the amplitude (Column 2, Lines 1 – 6). According to Best a percentage of modulation is used (Column 3, Lines 4 – 19). "One scene may be at 50 % modulation, another at 60%, and another at 35%, etc." (Column 3, Lines 11 – 12). This characteristic of each sequence is treated as a given by Best. Best does not suggest analysis of the entirety of a stored filed to determine the scale factors. Accordingly, claim 1 is allowable over the cited prior art for at least this reason.

Claim 1 is allowable for additional reasons that are independent of the reasons set forth above. Claim 1 is allowable because there is no motivation to combine the arrangements disclosed by Ueno et al. and Best. According to Ueno et al., high compression of a signal is "achieved with the use of pre-existing encoding and decoding units by handling the channels in common without dependency upon the degree of correlation of multi-channel digital data" (abstract). According to Ueno et al., signals for different outputs handled in common are more stable because there are less changes in the processing method (Column 4, Lines 55 -59) and more accurate because there is less chance of error (Column 3, Lines 30 – 35). Best discloses signals which are entirely channel-based data that is not handled in common. Incorporating the signals taught by Best into the arrangement disclosed by Ueno et al. would be detrimental to the remedy taught by Ueno et al. Thus, there is no motivation to combine the teachings of Best and Ueno et al. because the combined system would be unstable and produce inaccurate signals. Accordingly, claim 1 is allowable over the cited prior art.

Ueno et al. disclose encoding techniques for use with different sound output channels, such as left and right speakers (abstract). However, Best teach a system for mixing together different input sound tracks. A person of ordinary skill in the art would not have used the weighting of tracks for input mixing of Best with the audio for multi-speaker output systems of Ueno et al. These two teachings are directed to entirely different processes – input and output.

Ueno et al. disclose high compression encoding techniques. These techniques rely on complex digital processes using specific algorithms (Column 1, Line 13 - Column 2, Line 34). Best disclose analog mixing. A person of ordinary skill in the art would not have used the analog-based relative weighting teachings of Best for complex digital encoding or compression of Ueno et al. The weighting of Best is simply not applicable to the specific mathematics based encoding of Ueno et al.

Independent claims 36 and 71 recite features that are similar to the distinguishable feature recited in claim 1. Accordingly, claims 36 and 71 are allowable for at least the reasons stated above. Furthermore, claim 36 recites a means for determining scale factors. Best use manual setting, so do not disclose the means. Claim 72 recites a program of instructions, but Best show a manual lever.

Dependent claims 2 – 3, 37 – 38 and 73 – 74 depend from an allowable base claim, so are allowable for at least this reason. Further limitations of the dependent claims are allowable over the cited prior art.

Claims 2, 37 and 72 recite, *inter alia*, automatic digital audio mixing is resident on the server and initiated upon receiving one of said at least two digital audio files from said client device. The Examiner alleges Fredrick teaches that "the network audio is always active" and that the "said automatic digital audio mixing is resident on the server and initiated upon receiving one of said at least two digital audio files from said client device" (Office Action dated April 5, 2006; Page 5). Applicants respectfully disagree. According to Fredrick, the network audio is not always active. Fredrick teaches "[p]eriodic interrupts received by processor 105 from timer 109 can cause a transfer of control from tasks to service procedures in kernel 151" (Column 5, Lines 29 - 31). "Operating system 150 provided software timing services whereby a process can be scheduled to run at one or more specified timer interrupts" (Column 5, Lines 35 – 37). "In particular, a procedure for servicing a mixer and that mixer's associated input and output queues can be caused to run upon the occurrence of the next timer interrupt, the next one after that, or in general the Nth next timer interrupt where N is a positive integer of a size that can be conveniently represented in a unit of memory 106, such as a 16-bit or 32-bit integer" (Column 5, Lines 42 – 49). The mixer is only activated when the timer 109 generates the periodic interrupt. In other words, the mixer and network audio

are not always active, so the automatic digital audio mixing is not initiated upon receiving one of said at least two digital audio files from said client device. Frederick fails to disclose automatic digital audio mixing is resident on the server and initiated upon receiving one of said at least two digital audio files from said client device. Accordingly, Claims 2, 37 and 72 are allowable over the cited prior art.

CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance and seeks early allowance thereof. If for any reason, the Examiner is unable to allow the application but believes that an interview would be helpful to resolve any issues, he is respectfully requested to call the undersigned at (312) 321-4200.

Respectfully submitted,

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